

9-1-1986

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Georgia State University Law Review

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Recommended Citation

Georgia State University Law Review, *CRIMES AND OFFENSES Drug Abuse: Cocaine Trafficking/Mixtures Containing Cocaine*, 2 GA. ST. U. L. REV. (1986).

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CRIMES AND OFFENSES

Drug Abuse: Cocaine Trafficking/Mixtures Containing Cocaine

CODE SECTION: O.C.G.A. § 16-13-31 (amended)
BILL NUMBER: SB 397
ACT NUMBER: 1330
SUMMARY: The Act specifies the amount of pure cocaine a mixture must contain in order to bring the mixture within the cocaine trafficking statute.

History

Prior law provided minimum sentences for cocaine trafficking convictions based on the amount of cocaine or mixtures containing cocaine involved.¹ However, the statutory language related to either the total weight of pure cocaine, which is rarely found or sold, or the total weight of the mixture containing cocaine. Before the 1985 amendment to O.C.G.A. § 16-13-31, Georgia courts had interpreted the statutory language as not requiring a specific amount of cocaine in a mixture. The mixture involved merely had to weigh more than the specified amount to bring it within the province of the statute.² This had the incongruous effect of allowing a person to be prosecuted for the possession of twenty-eight grams of a mixture containing only ten percent cocaine, while a person who held the same amount of pure uncut cocaine (2.8 grams) theoretically could escape punishment for trafficking in cocaine.

In 1985 the Georgia Legislature amended the cocaine trafficking statute, O.C.G.A. § 16-13-31, to stiffen the mandatory minimum penalties for trafficking in cocaine.³ In amending the statute, however, the Legislature removed the words “any mixture containing cocaine” and “or the mixture involved” from the statute.⁴ The deletion of this language caused some concern among Georgia prosecutors, as it was unclear whether impure

1. O.C.G.A. § 16-13-31(a) (Supp. 1984) (previously Ga. Code Ann. § 79A-811(j)(3)).

2. *Lavelle v. State*, 250 Ga. 224, 225, 297 S.E.2d 234, 236 (1982) (defendant convicted for possessing 56.681 grams of white powder containing 14.3 grams of cocaine); *Belcher v. State*, 161 Ga. App. 442, 443, 288 S.E.2d 299, 300 (1982) (defendant convicted of possession of 113.3 grams of a substance containing cocaine, no specific amount proved); *Quinn v. State*, 171 Ga. App. 590, 593, 320 S.E.2d 827, 831 (1984) (State’s evidence that the 817.7 grams of substance contained cocaine was sufficient to uphold convictions).

3. 1985 Ga. Laws 552.

4. *Id.*

mixtures containing cocaine could be prosecuted under the statute and, if so, how much cocaine would be necessary to prosecute.⁵

SB 397

The Act amends O.C.G.A. § 16-13-31 by defining the quantity of cocaine contained in a mixture which would constitute the felony offense of trafficking in cocaine. The amended statute provides that either twenty-eight grams of cocaine or any mixture containing cocaine of the same weight with a purity of ten percent or more will constitute a violation of the statute.⁶ The effect is to reduce the amount of cocaine necessary to bring an accused within the cocaine trafficking statute. Hence, possession of 2.8 grams of pure cocaine in a twenty-eight gram mixture is an express violation of the law.

Additionally, O.C.G.A. § 16-13-31(a)(2) now provides that a mixture containing less than ten percent cocaine may still violate the statute if the total amount of cocaine contained in the mixture exceeds any of the quantities specified in O.C.G.A. § 16-13-31(a)(1).⁷ Therefore, a larger quantity of a cocaine mixture with a purity of less than ten percent will not necessarily escape the statute. For example, a kilogram (1,000 grams) of cocaine mixture with a purity of five percent would still violate the provisions of the statute; the quantity of cocaine would be fifty grams, an amount greater than twenty-eight grams as specified in O.C.G.A. § 16-13-31(a)(1), as amended.⁸

The Act further amends the 1985 statute by providing that penalties shall be determined by the amount of cocaine mixture, so long as the mixture weighs more than twenty-eight grams and the amount of cocaine in the mixture is greater than specified in the new Code section 16-13-31(a)(1).⁹ The effect of the new subsection (a)(2) is to base the degree of punishment on the quantity of pure cocaine contained in the mixture. For example, the new O.C.G.A. § 16-13-31(a)(1)(A), when read in the context of the new subsection (a)(2), provides that if the mixture (which must have a gross weight of twenty-eight grams or more) contains more than 2.8 grams but less than twenty grams of pure cocaine, a mandatory minimum sentence of ten years and a fine of \$100,000 shall be imposed.

5. See *Selected 1985 Georgia Legislation, Controlled Substances: Fines/Forfeiture Fund: Cocaine Task Force*, 1 GA. ST. U.L. REV. 285, 286 (1986).

6. O.C.G.A. § 16-13-31 (Supp. 1986).

7. *Id.*

8. Accordingly, the State must now prove both quantity and quality of the cocaine mixture in all cases. The pre-1985 law as interpreted by the courts, required only that 28 grams of a mixture contain cocaine. The 1985 amendment required possession of a minimum of 28 grams of cocaine. Telephone interview with Joseph J. Drolet, Fulton County Assistant District Attorney (July 9, 1986).

9. O.C.G.A. § 16-13-31 (Supp. 1986).